

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

KATHERINE SZMIGIEL,

Plaintiff,

v.

THE KROGER COMPANY, KATHY GRANT,  
and MARIE TOMOSHUNAS, jointly and  
severally,

Defendants.

---

Case No. 10-14737

Honorable John Corbett O'Meara

**ORDER OF PARTIAL REMAND**

Plaintiff filed this action against The Kroger Company, her former employer, and two co-workers, alleging the following causes of action: Count I, wrongful discharge/breach of contract; Count II, tortious interference with business relationship and expectancy; Count III defamation; Count IV, self-compelled defamation; Count V, interference with ERISA benefits under 29 U.S.C. § 1140; and Count VI, disability discrimination under Michigan's Persons with Disabilities Civil Rights Act, Mich. Comp. Laws Ann. §§ 37.1101 *et seq.* Defendants filed timely notice of removal.

Counts I and II are preempted by Section 301 of the Labor Management Relations Act and give rise to federal question jurisdiction under 28 U.S.C. § 1331. The court also has federal subject matter jurisdiction over Plaintiff's allegations regarding violations of ERISA. However, the remainder of Plaintiff's First Amended Complaint alleges causes of actions based solely on state law. In order to avoid jury confusion, the court will decline to exercise supplemental jurisdiction over the state law claims. See 28 U.S.C. § 1367(c); United Mine Workers v. Gibbs, 383 U.S. 715 (1966); and Padilla v. City of Saginaw, 867 F. Supp. 1309 (E.D. Mich. 1994).

Accordingly, it is hereby **ORDERED** that Counts III, IV, and VI are **REMANDED** to the Circuit Court for the County of Macomb.

s/John Corbett O'Meara  
United States District Judge

Date: December 21, 2010

I hereby certify that a copy of the foregoing document was served upon counsel of record on this date, December 21, 2010, using the ECF system.

s/William Barkholz  
Case Manager